

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Terry Patterson,	:	
	:	Civil Case No. 2:13-cv-00033
Petitioner	:	Criminal No. 2:12-cr-00044
v.	:	Judge Economus
United States of America,	:	Magistrate Judge Abel
Respondent	:	

### **Report and Recommendation**

Petitioner Terry Patterson, a prisoner at the Elkton Federal Correctional Institution, brings this action for writ of habeas corpus under 28 U.S.C. §2255. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2255 Cases in United States District Courts.

The petition alleges that on June 4, 2012, petitioner Patterson was convicted of receipt of visual depictions in the United States District Court for the for the Southern District of Ohio. He was sentenced to a term of 120 months.

In his petition, Patterson alleges that the Court lacked jurisdiction and that his sentence was excessive. The petition indicates that petitioner did not appeal his judgment of conviction. Section 2255 is not a substitute for a direct appeal, and Patterson may not circumvent the direct appeal proces. *United States v. Frady*, 456 U.S. 152, 167-68 (1982). Where, as here, a petitioner has failed to assert his claims on direct

appeal, in order to raise them in a § 2255 motion, he must show either good cause for his failure and that he would suffer prejudice if not permitted to proceed or that he is actually innocent. *Bousely v. United States*, 523 U.S. 614, 622 (1998); *Regalado v. United States*, 334 F.3d 520, 528 (6<sup>th</sup> Cir. 2003).

Accordingly, the Magistrate Judge RECOMMENDS that this action be DISMISSED for petitioner's failure to show cause why he did not pursue this claim on direct appeal.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also, Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel  
United States Magistrate Judge